



His Excellency Hans Corell
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22 January 2002

Your Excellency,

I am pleased to forward to you herewith our detailed response to the points raised in your letter of 10 October. As I have said before, we believe that we will be able to find mutually acceptable resolutions to the points you have raised, as the Law passed by the Cambodian legislature does not contradict any of the fundamental principles we agreed on in our negotiations. You will see in our response that most of the points you raised can be clarified in the Articles of Cooperation, while certain points appear to reflect a misunderstanding of Cambodian circumstances.

I look forward to receiving your response to these points as well as to those made in my letter of 23 November,

Sincerely,

Sok An
Senior Minister in Charge of the Office of the Council of Ministers

CAMBODIAN RESPONSE TO THE ELEVEN POINTS RAISED IN
H.E. HANS CORELL'S LETTER OF 10 OCTOBER 2001

- 1) **Article 8** – We have confirmed that Cambodia is not a party to the 1973 Convention on Internationally Protected Persons, so it appeared necessary to delete it from the Draft Law to avoid a challenge to the validity of the applicable law forming the competence of the Extraordinary Chambers. Inclusion of the 1961 Vienna Convention on Diplomatic Relations, to which Cambodia is a signatory, would appear to give scope for prosecution, since *prima facie* it would seem that the Khmer Rouge did violate this Convention;
- 2) **Articles 11, 21 and 27** – clearly the intention here is that foreign reserve judges and prosecutors would normally replace foreign judges and prosecutors, while Cambodian reserve judges and prosecutors would replace Cambodian judges and prosecutors. I made clear during the Senate debate on 12 January that Article 46 would govern the process of filling the positions of judges and prosecutors, and the process is outlined there quite clearly -- only after all other avenues have been exhausted would Cambodian replacements for foreign positions be resorted to. This procedure can be clearly articulated in the Articles of Cooperation;
- 3) **Article 18** – Cambodia does not have a separate body of professional prosecutors. The Supreme Council of the Magistracy draws from a common pool to assign judges (*juges assis*), prosecutors (*juges debouts*) and investigating judges (*juges d'instruction*) to certain courts as required. The wording of this article was therefore designed to conform to the prevailing Cambodian reality;
- 4) **Articles 20, 23, 33 and 36** – The Law states clearly that the Extraordinary Chambers are established within “the existing court structure” (Article 2), and that trials are to be conducted “in accordance with existing procedures in force” (Article 33). The words “and if there are lacunae in these existing procedures” were added to these articles to avoid a potential conflict between Cambodian and other international procedures, recognising a hierarchy in which Cambodian law and procedure are relied upon before resorting to other international procedure where necessary to fill any gaps;
- 5) **Articles 24, 27 and 35** – Cambodian Law on Criminal Procedure, 1993, guarantees defendants their free choice of counsel. The use of the word “unconditionally” in Article 24 is intended to emphasise that pre-existing right, which also means that, if the defendant cannot find or afford to retain a lawyer, the government must provide one. This can be clearly articulated in the Articles of Cooperation;

- 6) **Article 31** – Cambodia fully understands that the Secretary-General has the right to determine appointments of UN staff. Your concern, originally raised in your letter of 9 January, was addressed, and the translation by the Council of Jurists, sent to you on 30 August, reads: “The foreign Deputy Director shall be appointed by the Secretary-General of the United Nations and assigned by the Royal Government of Cambodia .” It is our view that all administrative elements should be assigned by the Royal Government of Cambodia because the Extraordinary Chambers are established within the existing Cambodian court structure;
- 7) **Article 33** – As we assured you repeatedly during our negotiations, the Royal Government of Cambodia undertakes the responsibility of providing security for all people associated with the Extraordinary Chambers, as it does for all people residing in or visiting the Kingdom of Cambodia . The word “voluntarily” was added in order to encourage Suspects to give themselves up, by emphasizing that they too would have their security assured; This can be clearly articulated in the Articles of Cooperation;
- 8) **Article 40** -- I wish to point out that in our third round of negotiations this second sentence was not brought to the table as a proposed addition to our Draft Law (as indicated in your cover note to your version of the Draft Law dated 7 July 2000, presented after the conclusion of our meetings, stating “We should like to underscore that we have added a second sentence to Article 40...”).

It is of some surprise to me that you raise this point again, as I understood that our two delegations had reached consensus in March 2000, and my letter of 20 March spelled out very clearly the position of the Royal Government of Cambodia on this issue:

“The Cambodian Constitution gives the right to His Majesty the King to grant amnesties (Article 27), and also to the National Assembly to make laws concerning amnesty (Article 90). So far His Majesty King Norodom Sihanouk has only exercised this right with regard to the Khmer Rouge when requested by the Royal Government of Cambodia, with a clear endorsement also by two-thirds of the members of the National Assembly.

“Our Draft Law (Article 40) makes a clear statement of the government’s intent not to request an amnesty for any person who committed crimes relating to the applicable law described in Articles 3-8 of that Draft Law. This indicates our intention to make a clear break in the cycle.”

The Royal Government of Cambodia could never have agreed to introduce wording into the Law that would conflict with the Constitution, and that would have invited the Law’s rejection by the Constitutional Council. However, several times during the debate in both the National Assembly and the Senate, I made clear that no person is above or outside the law;

- 9) **Article 42** –The RGC confirms its assurance that immunity for “words spoken or written and all acts performed by them in their official capacity” will continue after cessation of any relationship with the Extraordinary Chambers. I wish to clarify that the sentence “Such immunity shall continue after termination of employment with the chambers” was removed because it was understood to have the potential to extend this immunity to other acts occurring after termination of employment. The immunity does not cover words and acts not directly related with the proceedings of the Extraordinary Chambers, either during the period of service to the Extraordinary Chambers or afterwards. As I understand it, the immunity provided in the Law is *ratione materiae* rather than *ratione personae* (applying only to the official acts themselves rather than to all acts performed by the person).
This can be spelled out more precisely in the Articles of Cooperation;
- 10) **Article 45** – Here I would like to emphasise that the sole “official working language” of the Extraordinary Chambers is Khmer. While we have always maintained that translations and interpretation into and from Russian should be provided (along with English and French) all such translation is in order to meet the needs of the participants in the process, and we too would not want the trial to be impeded by any lack in this area. We are more than happy to consider any way to rationalise this heavy work with regard to all three foreign languages. For instance, perhaps all important court documents (notably indictments and decisions) could be translated into all three languages, and other documents translated and simultaneous interpretation provided only when needed by any of the active participants in any stage of the proceedings.
This can be spelled out more precisely in the Articles of Cooperation;
- 11) **Article 46** – I stated clearly in my introductory presentation of the Draft Law to both houses of our legislature that this entire law has been drawn up in a spirit of cooperation between Cambodia and the United Nations. We have no intention of limiting the right and opportunity for the Secretary-General to send more names to supplement the lists during the course of the proceedings, should this become necessary.
This can be spelled out more precisely in the Articles of Cooperation;

Phnom Penh
22 January 2002